IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 685 OF 2004

IN

CHAMBER SUMMONS NO. 1038 OF 2004

IN

MISCELLANEOUS APPLICATION NO.1 OF 2004

IN

CHAMBER ORDER NO. 99 OF 2004

IN

TESTAMENTARY SUIT NO. 17 OF 1996

IN

TESTAMENTARY PETITION NO. 132 OF 1996

Smita Ambalal Patel .. Appellant

V/s

1) Ila Vipin Pandya

2) Ms. Fereshte Sethna .. Respondents

Appellant in person.

Mr.S.H. Doctor, Senior Advocate, with Mr.J.B. Sen, Mr.Prakash Shah and Mr.D'Cruz i/b Mehta & Girdharlal for Respondent No.1.

Ms.Anuradha Dutt with Ms.Dipti Das i/b Shrirang Shrimani for Respondent No.2.

CORAM : H.L. GOKHALE &
S.C. DHARMADHIKARI, JJ.

DATE : 31ST MARCH 2005

ORAL JUDGMENT : (Per Gokhale, J.)

1. Heard Ms.Patel, the Appellant in person. Mr.Doctor appears for Respondent No.1. Ms.Dutt appears for Respondent No.2.

2. This appeal is filed against an order passed by a learned Single Judge on 23rd September 2004 on Chamber Summons No.1038 of 2004, which the Appellant had taken out in Testamentary Suit No.17 of 1996 wherein she is a caveatrix / Defendant. The prayer in the chamber summons was two-fold.

(a) That the office be ordered and directed to furnish to the caveatrix / defendant in the Testamentary Suit No.17 of 1996 certified copy of the Miscellaneous Application No.1 of 2004 in the Testamentary Suit No.17 of 1996 expeditiously;

(b) That the office be ordered and directed to furnish to the caveatrix / defendant transcript of the two audio cassettes, in respect of the Tape-recorded telephonic conversation held on

> Saturday, February 7 2004, between Ila V. Pandya (Petitioner / Plaintiff) and Ms. Fereshte Sethna (Advocate) filed in the Miscellaneous Application No.1 of 2004 in the Testamentary Suit No.17 of 1996 in the Testamentary Petition No.132 of 1996.

Thus, as can be seen from the chamber summons, prayer (a) sought certified copy of Misc. Application No.1 of 2004. That application was moved by Respondent No.2 to this appeal against Respondent No.1 seeking an action for perjury against her. Respondent No.2 is the former advocate of Respondent No.1. Apart from moving that application, two audio cassettes were tendered before the court in support of that application for perjury. The present Appellant, who is the caveatrix / Defendant in that proceeding, applied for a certified copy of that Misc. Application as also the two audio cassettes. The chamber summons came to be rejected by the order passed on 23rd September 2004. It is being aggrieved by this order that the present appeal is filed. The learned Single Judge has held that the Appellant is not concerned with the Misc. Application. He has also noted that similar request was made earlier and was rejected.

3. Ms.Patel, the Appellant appearing in person, submitted that under section 74 of the Evidence Act, one is entitled to seek public documents and section 74(1)(iii) refers to the documents forming the acts or records of the acts amongst others of public officers which include judicial officers. She also referred to section 76 thereof which provides that every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor. She pointed out that she had applied for inspection and she has been given inspection of the Misc. Application and, therefore, if she is a party to the proceeding, she is entitled to the certified copy thereof. That application having been rejected, this appeal has been filed.

4. Mr.Doctor, learned counsel for Respondent No.1, submitted that this application was essentially between Respondent No.1 and Respondent No.2. That apart, he submitted that the tape-recorded conversation was a priviledged communication between two of them. The tapes are not exhibited as yet and, therefore, there is no occasion to give the tapes in any case to the Appellant herein. Even, as far as the Misc.

Application is concerned, he submitted that it is an application made against his client and the Appellant had nothing to do with the same. He submitted that similar application was made earlier and rejected.

5. Ms.Dutt, learned counsel for Respondent No.2, submitted that the order passed by the learned Single judge indicated that he accepted that this was a proceeding only between Respondent No.1 and Respondent No.2 and in a sense in camera proceeding under section 153-B of Civil Procedure Code. She referred to a few judgments. Firstly, the case of **Naresh Shridhar Mirajkar v. State of Maharashtra - 1966 (3) SCR 744**. That was a matter where evidence of a witness was directed to be recorded in camera. Ms.Dutt submitted that similarly in the present case the impugned order will indicate that this is an order for in camera proceeding and there is no need for the court to give any such copies to a party which has nothing to do with the controversy between two other parties. She relied upon two judgments of Delhi High Court reported in **93 (2001) Delhi Law Times 548 (DB) and 91 (2001) Delhi Law Times 91 (DB)**, both on the question of copy of evidence recorded in camera not being supplied to a third party. Lastly, she relied upon a judgment in the case of **Gurunanak Provisions Stores v. Dulhonumal Savanmal -**

AIR 1994 Gujarat 31, where in para 16 the learned Single Judge has observed that if a document is a priviledged one, it will always remain priviledged. In the present case, she submitted that the application has certain enclosures which contain a priviledged information and,

therefore, the same ought not to be made available to the Appellant.

6. We have noted the submissions of all the parties concerned. As far as the audio tapes are concerned, we quite see the objection of Mr.Doctor and Ms.Dutt that these tapes are not exhibited as yet and, therefore, since they contain the conversation between Respondent No.1 and Respondent No.2, one can certainly say that those tapes should not be made available to a party which is applying for copies thereof. This is essentially because they are only tendered on record but are not exhibited. However, as far as the Misc. Application made to the court is concerned, it is a part of the record of the court in the Testamentary Suit. When a party to that suit takes inspection thereof and then applies that a certified copy thereof be furnished to that party, there is a duty cast under section 76 of the Evidence Act on the court officer to make available the certified copies. It is entirely a matter between

the court and the applicant. When such an application is made, all that is expected is that the fees for the same are to be received under section 76 and a copy thereof is to be furnished to the applicant. There is nothing other than that. Even if such an application for certified copy was made earlier and rejected, the learned Single Judge has not rejected the second application on that ground but has gone into the merits thereof. The judgments relied upon by Ms.Dutt also cannot apply since there is no order directing in camera proceeding referable to that section.

7. The Appellant undoubtedly has demonstrated her interest in the proceedings. This is on the footing that upon her caveat being lodged and accepted, this Court converted the proceedings into regular suit. Additionally, we are informed that she has instituted proceedings for administration of estate of the deceased. Thus, the litigation is with regard to the entitlement of Appellant and Respondent No.1 to the properties of the deceased. It is in such proceedings that Respondent No.2, former Advocate of Respondent No.1, has filed the Miscellaneous Application for perjury. We have perused the title of that application and the Appellant is party thereto.

8. The learned Single Judge proceeds on the footing that since the Miscellaneous Application is not claiming any reliefs against the Appellant, she has no right to get copies thereof. However, with respect, the learned Single Judge has overlooked the fact that inspection of this application and papers related thereto has been offered by the Registry to the Appellant and she has inspected the same.

9. By mere grant of copies, it cannot be construed that the Appellant has a right to participate and be heard in the perjury application. It is directed to be heard along with main suit. Ultimately, it is for the learned Judge to decide this issue at the hearing of the main proceedings. We are not deciding this question and is kept open. We make it clear that the issue insofar as evidentiary value of papers and documents in the perjury proceedings is kept open to be agitated by both sides and being considered by the learned Single Judge at an appropriate stage.

10. For the reasons stated above, we allow this appeal partly and interfere with the order dated 23rd September 2004 passed by the learned Single Judge to the extent he rejected prayer (a) of the chamber summons. We allow this appeal to that limited extent, namely that

prayer (a) of Chamber Summons No.1038 of 2004 will stand granted. The order passed by the learned Single Judge on prayer (b) is maintained. There will be no order as to costs.

11. Mr.Doctor applies for stay of this order. The impugned order will remain stayed for a period of 4 weeks.

(H.L. GOKHALE, J.)

(S.C. DHARMADHIKARI, J.)